

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-HC-2165-BR

UNITED STATES OF AMERICA,)
)
Petitioner,)) ORDER
)
v.)
)
RODNEY MAHTO,))
)
Respondent.))

This matter is before the court on respondent's 31 May 2011 motion to dismiss the government's petition for his commitment as a sexually dangerous person pursuant to 18 U.S.C. § 4248 (DE # 67). Petitioner has responded and opposes the motion.

Respondent filed a similar motion to dismiss on 9 November 2011 (DE # 36), which the court denied on 18 May 2012 (see DE # 65). There appears to be only one issue in the current motion that was not specifically raised and considered in the prior motion to dismiss. Respondent now argues that the length of time he has been detained past his release date without a hearing violates his right to procedural due process and that the violation requires the dismissal of the § 4248 petition and his release. However, even if the court assumes for the sake of argument that a procedural due process violation exists because of a delay in holding the hearing, “the proper remedy would not be dismissal of the certification and release, but conducting the hearing and determining on the merits whether [respondent] should be committed as a ‘sexually dangerous person’ under § 4248(a).” United States v. Timms, 664 F.3d 436, 455 n.19 (4th Cir.), petition for cert. filed, No. 11-10654 (U.S. Jun. 4, 2012). In this case, respondent's hearing is scheduled to begin on 12 July 2012 (see DE # 60).

After having fully considered the motion, the court concludes that all of respondent's arguments are without merit. The motion to dismiss is DENIED.

This 25 June 2012.



W. Earl Britt
Senior U.S. District Judge